

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court	District <u>Western District of Tennessee</u>
Name (under which you were convicted): <u>Narrino Stewart</u>	Docket or Case No.: <u>2:08-cr-20052-STA All</u>
Place of Confinement: <u>United States Penitentiary Lewisburg</u>	Prisoner No.: <u>22104-076</u>
UNITED STATES OF AMERICA	Movant (include name under which you were convicted) <u>Narrino Stewart</u>
v.	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____
U.S. District Court Western District of Tennessee (Memphis)
2. (a) Date of the judgment of conviction (if you know): _____
3/17/09
3. (b) Date of sentencing: _____
7/29/2009
4. (b) Length of sentence: _____
360 MONTHS
4. (c) Nature of crime (all counts): _____
(1) Motor Vehicle Theft- Carjacking; 18:2119 (2) unlawful Transport of firearms, 18:922 (g); (3) Recieve stolen firearms 18:922(j) (4) Motor Vehicle theft- Carjacking 18:2119 and (5) violent crime/Drugs/machine Gun 18:924 (c)
5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____
I was under the impression that i would be pleading to two Counts of the Indictment, instead i was deceived into pleading to all counts except one Count
6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: _____

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised: N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): _____

(5) Grounds raised: N/A

N/A

N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: _____

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(7) Result: N/A

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(7) Result: N/A

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INFEFFECTIVE ASSISTANCE OF COUNSEL, (see Attachment cont')
Federal Public Defender Needum Louis Germany, III

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel was ineffective in that he promised me that if i would Plea to a Charge of Receiving Stolen firearms 18:922; 'and Theft Car Jacking 18: 2119, that all other Counts will be dismissed at Sentencing and i would receive no more than (15) fifteen years. instead i was found guilty of (5) five of the (6) six counts, some of the Counts were identical. furthermore Counsel failed to challenge the indictment that had identical Counts for the same single offense in violation of the ~~the~~ Double Jeopardy Clause provided by the 5th Amendment of the U.S Constitution. Though the Sentence were imposed to Run Concurrently, the defendant were still subject to a loss of Rights and the Double Jeopardy Clause still attaches

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: I PLEADED GUILTY, BECAUSE I BELIEVED I WAS ONLY TAKING A PLEA TO TWO COUNTS, therefore i lost my Appeal Rights

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

ATTACHMENT Cont'

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Ground one.

INEFFECTIVE ASSISTANCE OF COUNSEL

To Prove Ineffective Assistance of Counsel first, counsel performance must be shown to have been deficient. Second, it must be shown that the deficient performance prejudiced the defendant.

A defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceedings would have been different.

In this matter counsel prejudiced the Appellant by deceiving Appellant in believing that if Appellant accept a plea, Appellant will only be charged with two counts of the indictment and receive only fifteen years (see Exhibit ONE).

Counsel even showed his prejudice by telling the judge "Thank You" for Appellant receiving 30 years (see Sentencing transcripts and exhibit one) as if 30 years was the lowest time Appellant could have received.

1. NOTE: Appellant was denied access to Trial transcripts due to being Indigent (see Exhibit-B)

I signed the plea agreement due to me putting my trust in my Counsel and what he promised me. furthermore it is noted that i have mental issues and it was recommended by the court that i receive treatment. i am not well educated 2. NOTE: This Motion is being done by a Jailhouse lawyer. Appellant ask this Honorable court of Appeals to construct this motion liberally since Appellant is a

Cont pg. 2 of 2 Ineffective Assistance

laymen without formal teaching of the jurisprudence and function of the law and to hold Appellant to less stringent standards than those drafted by licensed attorneys or those of basic level of Education.

When Appellant was shown the plea Agreement Appellant did not understand what was being read, but Appellant was compelled to put his trust in Counsel due to being deceived and mislead. (see Exhibit one). additionally.

Appellant argues that the indictment in this case was flawed, in that it charged the same offense in more than one account in violation of the Double Jeopardy Clause.

On February 19 2008 a six count indictment was charged against the Appellant four of the six counts are the same (see Exhibit A) Appellant was found guilty of all counts with the exception of one.

even though Appellant pleaded to the counts due to being deceived by his attorney, Appellant should not be charged for the same count twice (see exhibit A) because it is unconstitutional. Therefore.

Counsel supposed to challenge the indictment and this lack of performance was deficient and it prejudiced me.

Therefore Appellant humbly request that this honorable Court set a hearing for the above mentioned facts.

Email: ned_germany@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
*Designation: Public Defender or
 Community Defender*
Appointment

Pending Counts

18:2119 ; MOTOR VEHICLE
 THEFT - CARJACKING
 (1)

18:922(g) ; UNLAWFUL
 TRANSPORT OF FIREARMS,
 ETC.
 (3)

18:922(j) ; RECEIVE STOLEN
 FIREARMS
 (4)

18:2119 ; MOTOR VEHICLE
 THEFT - CARJACKING
 (5)

18:924(c) ; VIOLENT
 CRIME/DRUGS/MACHINE
 GUN
 (6)

Highest Offense Level (Opening)

Felony

Terminated Counts

18:924(c) ; VIOLENT
 CRIME/DRUGS/MACHINE

Disposition

INCARCERATION: 360 Months;
 SUPERVISED RELEASE: 3
 Years; RESTITUTION:
 \$12,800.00; S/A: \$500.00.

INCARCERATION: 360 Months;
 SUPERVISED RELEASE: 3
 Years; RESTITUTION:
 \$12,800.00; S/A: \$500.00.

INCARCERATION: 360 Months;
 SUPERVISED RELEASE: 3
 Years; RESTITUTION:
 \$12,800.00; S/A: \$500.00.

INCARCERATION: 360 Months;
 SUPERVISED RELEASE: 3
 Years; RESTITUTION:
 \$12,800.00; S/A: \$500.00.

INCARCERATION: 360 Months;
 SUPERVISED RELEASE: 3
 Years; RESTITUTION:
 \$12,800.00; S/A: \$500.00.

Disposition

Dismissed on motion of the United

(Exhibit-B)

UNITED STATES DISTRICT COURT
Western District of Tennessee
www.tnwd.uscourts.gov

Thomas M.. Gould
Clerk of Court

Memphis (901) 495-1200
Memphis fax (901) 495-1250
Jackson (731) 421-9200

Date: 03-06-2013
Re: Narrino Stewart

 Your submission is being returned or additional action is required for one or more of the following reasons (and it is not being made a part of the court record:)

 No case number is listed on your document. We charge a search fee of thirty dollars (\$30.00) to find the case number for you.

 This court does not file discovery: Initial Disclosures, Request for Admissions, Interrogatories, Request for Production or their responses or answers unless ordered by the Court. Please see Local Rule 26.1

 You did not submit enough copies to have any returned to you.

 Payment is required with this action. Please see attached fee schedule.

 Your cashier check or money order should be made payable to: U.S. District Court Clerk.

 What is this payment for: judgment, fine, restitution, special assessment, copies, etc?

 Enclosed is a copy of the Local Rules you requested.

 Copy work is \$.50 per page.

Other: *Courtesy Copies..Docket Sheet...*

Thomas M. Gould
Clerk of Court
By: 
Deputy Clerk

242 Federal Building
167 North Main Street
Memphis, TN 38103

262 Federal Building
111 South Highland Ave
Jackson, TN 38301

(Exhibit one)

Affidavit

United States of America Vs. Stewart

Case No. 2:08-cr-20052-STA-All

I, Narrino Stewart, do hereby make the following statement freely without any promises or assurances.

1. I have had this Affidavit read to me and i totally agree and understand the statements that is set forth in this Affidavit N.S.
2. I state that my Attorney in the above referenced case Needum Louis Germany III Federal Public Defender did promise me that i would receive only 15 years if i took a plea to Motor Vehicle theft and Recieve stolen firearms N.S.
3. I state that i did not totally understand my plea agreement but trusted in the promise my attorney gave me that i would receive only 15 years N.S.
4. I state that i am not well educated and do not comprehend good and that a jailhouse lawyer is assisting me with this Affidavit and Motion for 2255 Motion to Vacate, Set aside or Correct the Sentence.
5. I state that i am not being provided with copies of my transcripts and/or any documents related to my case, so that i can attack my sentence on Post conviction successfully. neither was i aware that i had any appeal rights.

Signed: Narrino Stewart Date 7/29/13 executed at United States Pen' Lew'

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND TWO: Chronological Sentencing, in light of New Rule by the 6th Circuit (see Attachment Cont'd)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant Argues that his sentence for multiple federal fire-arm violations is entitled to have the sentence enhancement in the order that produces the lowest sentence. Defendant was charged with Unlawful transport of a firearm Count 3 18:922(g); Machine Gun 18:924 (c); Receiving stolen firearms 18:922(j) (see Exhibit A) and was given 360 months to each count each count was applied Chronologically, therefore violating the Rule of lenity

ATTACHMENT CONT'

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Ground two

Chronological Sentencing in light of new case law

Imposition of a sentence (a) factors to be considered in imposing a sentence the court shall impose a sentence sufficient but not greater than necessary, to comply with the purpose set forth in paragraph (2) of US § 3553 of this subsection. the court in determining the particular sentence to be imposed

A. Class B felony is not to exceed no more than (25) twenty five years.

Appellant argues that he is entitled to having his sentence sorted in the order that produces the shortest sentence. Appellant was charged with five counts and given (360) three hundred sixty month to be served concurrently.

Therefore Appellant humbly ask this court to resentence him in light of the new case law mentioned within this motion.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: New Case that was decided after my sentencing. United States v. Washington, 6th Cir., No. 12-1219 5/10/13

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* Appellant States now and throughout this motion that he is uneducated, do not comprehend well and is a laymen to law, moreover Appellant has been locked down in Segregation Confinement 23-24 hours a day over a year from the date of this motion and has not had and still does not have access to the transcripts or any documents pertaining to his case. Appellant states that the preparation and completion of this motion is via jailhouse lawyer and without his assistance Appellant would not know what to do or how to begin a motion to this court regarding any matter even if instructed on how to do so
Appellant also states that he did not know of the unconstitutional violations that occurred during and throughout the court proceedings until someone told him about them when appellant was made aware it he had spent time trying to find someone that could assist him with this motion. Appellant is oblivious to the law his rights and rules Governing most Court Proceedings.

Appellant request that this honorable Court have mercy on him and allow this motion to proceed due to the above mentioned facts.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

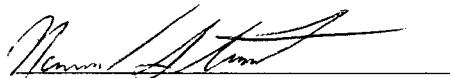
HAVE a hearing on Appellant Claims of ineffective
Assistance of counsel, and Resentence Appellant in chron-
ological order

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
RECEIVED SEPTEMBER 4, 2013 (month, date, year).

Executed (signed) on _____ (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion.

